

REMARKS

This paper is presented in response to the non-final official action of October 15, 2009, wherein (a) claims 1-3, 5-8, 10-12, 15-17, and 19-21 were pending, (b) claims 1, 2, 5, 7, 8, 10, 15-17, and 19-21 were rejected as obvious over Hiroshi and Boersma in view of Mitsumori, (c) claims 3, 11, and 12 were rejected as obvious over Hiroshi in view of Boersma and Mitsumori and further in view of applicant's admitted prior art, (d) claim 6 was rejected as obvious over Hiroshi in view of Boersma and Mitsumori and further in view of Rose, and (e) claims 3, 11, and 12 were rejected as obvious over Hiroshi in view of Boersma and Mitsumori and further in view of Barnes.

This response is timely filed, as it is accompanied by a petition for automatic extension of time, and the requisite fee.

The "Office Action Summary" indicates that the action is non-final, while it is indicated at page 10 that the action is final. The examiner confirmed in a telephone message on October 26, 2009, that the action indeed is non-final.

By the foregoing, claims 1 and 19 are amended, claims 8 and 21 are canceled, and claim 22 is new. Claims 1-3, 5-7, 10-12, 15-17, 19, 20, and 22 are pending and at issue. Claim 1 is the only independent claim in the application.

The various obviousness rejections, all based on Hiroshi, Boersma, and Mitsumori, are respectfully traversed; reconsideration of the claims, as amended, is solicited.

Claim 1 has been amended to recite "a pallet ... with a circumferential gap as part of the planar top of the pallet formed between an outer edge of the sidewalls and a peripheral edge of the top of the pallet." This limitation corresponds to previously presented claim 8 and otherwise is supported by the description and the figures as follows. The additional recitation of the gap being "a part of the planar top of the pallet" is illustrated in Fig. 3 in combination with page 2, lines 12-16 and page 4, line 30 to page 5, line 4. The area of the top of the pallet 42 is defined by the periphery 56 of the top of the pallet. The area occupied by the sidewalls 24 is defined by the outer edge 52 of the sidewalls (indicated by the closed dashed line in Fig. 3).

The gap 54 between the outer edge 52 of the sidewall and the periphery 56 of the top of the pallet 42 is therefore part of the top of the pallet, where the gap area does not protrude from the top of the pallet 42. The area between the dashed line 52 and the periphery edge 56 of the pallet forms a circumferential gap, see Fig. 3. This area (the gap 54) is not covered by any other component of the container.

The invention provides a container with a reduced risk of slippage of a transported product and the container, because the product is placed directly on the pallet, while alerting workers that a forklift is required to lift the object because of the pallet, which is immediately visible to the worker due to the circumferential gap. See page 5, lines 16-19 of the application as filed.

The applicants respectfully traverse the rejection of claims 1-3, 5-8, 10-12, 15-17, and 19-21 as obvious over Hiroshi in view of one or more of Boersma, Mitsumori, Rose, and Barnes, collectively the “cited art.” The applicants respectfully submit that the cited art fails to disclose or suggest all claim limitations.

In particular, each of the pending claims recites a container comprising, in part, sidewalls that define a storage area and a pallet, wherein the pallet and sidewalls combine to form an open top box with a circumferential gap as part of the planar top of the pallet formed between an outer edge of the sidewalls and a peripheral edge of the top of the pallet. The cited art fails to disclose or suggest a pallet and sidewalls that combine to form an open top box with a circumferential gap as part of the planar top of the pallet formed between an outer edge of the sidewalls and a peripheral edge of the top of the pallet.

It is clear from the official action, that the only prior art relied upon to allegedly show a gap between an outer edge of the sidewalls and a peripheral edge of the top of the pallet is Hiroshi. See the official action at page 6. The applicants respectfully disagree and submit that Hiroshi fails to disclose or suggest a gap between an outer edge of the sidewalls and a peripheral edge of the top of the pallet. The drawing figures of Hiroshi do not show a circumferential gap to the outer edge of pallet 1. The simple fact, that the upper tray 10 can be placed above the lower tray 3 does not necessarily indicate a circumferential gap between the upper tray 10 and the lower

tray 3.¹ However, even if certain aspects in description and drawings are interpreted as such a gap, the gap disclosed in Hiroshi only extend from the outer edge of the lower tray 3 to the outer edge of the pallet 1 in contrast to the claimed container, where the gap extends from the outer edge of the sidewalls to the outer edge of the pallet. The alleged gap disclosed by Hiroshi clearly differs from the claimed gap in the pending claims. The common understanding of a “gap” is an area with nothing in between. Therefore Hiroshi does not disclose a gap extending from the edge of the body 8 to the edge of a pallet.

The disclosure of Hiroshi does not provide any hint to the skilled artisan how to modify the subject of Hiroshi to end-up with the present invention, because Hiroshi discloses fixing the lower tray 3 to the pallet (lower tray 3 and pallet 1 being unified by applying fixation means of adhesives, screws etc. as disclosed on page 3, paragraph 0016, Hiroshi). Therefore, persons skilled in the art will not consider further prior art to solve the problem of securing the body 8 to the pallet because the disclosure of Hiroshi already provides a solution (i.e., unifying the lower tray 3 and the pallet 1).

However, even if the skilled artisan would consider Mitsumori for another alternative solution of securing the sidewalls, Mitsumori teaches away from the claimed container, because the container 5 of Mitsumori (corresponding to the sidewalls of the claimed container) is attached to the pallet P via end cleats 4, 15 applying fixation means such as through-holes 6, tongue pieces 14 etc (e.g. see Figs. 4-9). The teaching of Mitsumori therefore provides an alternative solution of the securing sidewalls to a pallet that is completely different to the claimed container. The fixation means of Mitsumori are vertically folded outer parts of the top of the pallet fitting to the attached container 5 without a gap between the container 5 and the fixation means. Furthermore, the vertical fixation means prevent a planar pallet top (without any protrusions) as claimed in our invention. The presence of the fixation means as disclosed by Mitsumori excludes the presence of a circumferential gap as part of the planar top of the pallet formed between an outer edge of the

¹ The applicants note that according to this combination of upper tray 10 and lower tray 3, the lower tray would take the place of the pallet in the pending claims because the storage area between walls of the upper tray 10 would be disposed immediately adjacent the lower tray 3, not a pallet.

sidewalls and a peripheral edge of the top of the pallet. The different kinds of fixation of the container 5 to the pallet are considered essential by Mitsumori, see column 5, lines 29-33. Those skilled in the art will not get any hint from Mitsumori how to modify the subject of Hiroshi in order to end-up with the claimed container.

The same holds, if one would consider Mitsumori as closest prior art to assess the claimed container. The teaching of Mitsumori considering the fixation means as essential to provide a secure packaging box will lead skilled artisans away from the claimed container.

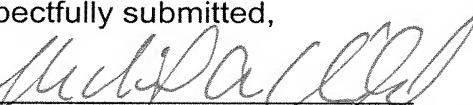
Because the cited art fails to disclose or suggest a container having sidewalls that define a storage area and a pallet, wherein the pallet and sidewalls combine to form an open top box with a circumferential gap as part of the planar top of the pallet formed between an outer edge of the sidewalls and a peripheral edge of the top of the pallet, none of the pending claims can be rendered obvious over any combination of the cited art. For this reason, the applicants respectfully request withdrawal of the rejection of claims 1-3, 5-8, 10-12, 15-17, and 19-21.

For all the foregoing reasons, it is submitted that all pending claims are of proper form and scope for allowance, and such action is solicited.

Should the examiner wish to discuss the foregoing or any matter of form in an effort to advance this application toward allowance, he is urged to telephone the undersigned at the indicated number.

March 15, 2010

Respectfully submitted,

By 
Michael A. Chinlund, Reg. No. 55,064
MARSHALL, GERSTEIN & BORUN LLP
6300 Wills Tower
233 South Wacker Drive
Chicago, Illinois 60606-6357
(312) 474-6300
Agent for Applicant